

JUDGE LYNCH

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARS SNACKFOOD US, LLC,

Plaintiff,

v.

CERES COMMODITIES GROUP, LLC,

Defendant.

Case No.

COMPLAINT FOR BREACH
OF CONTRACT

Plaintiff Mars Snackfood US, LLC (formerly known as Masterfoods USA) ("Mars"),
alleges as follows against Defendant Ceres Commodities Group ("Ceres"):

INTRODUCTION

1. This is an Action for breach of contract, goods had and received, and open account, in which Plaintiff Mars sues Defendant Ceres for non-payment of three invoices representing shipments of cocoa beans sold by Plaintiff to Defendant, for which Plaintiff is owed the aggregate amount of \$444,902.94.

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1332, because Plaintiff and Defendant are corporate citizens of different States and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

3. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(a)(1) because the defendant resides in this District.

PARTIES

4. Plaintiff Mars is a limited liability company organized and existing under the laws of the State of Delaware. Its corporate headquarters are in Hackettstown, New Jersey. Plaintiff is a member of the group of companies ultimately owned by Mars, Incorporated, located in McLean, Virginia. Plaintiff is a manufacturer of, *inter alia*, chocolate confectionery products, and therefore is a buyer and occasional seller of cocoa beans.

5. On information and belief, Defendant Ceres is a New York corporation, with headquarters in New York, New York. Ceres is a commodity trader and broker, with whom Mars has done business for a number of years.

FACTS

6. On or about May 7, 2007, Defendant placed an order with Plaintiff for 12.357 metric tons of Hispaniola cocoa beans, at \$4,525.00 per metric ton, for a total of \$55,915.42. Goods conforming in all respects to the order were duly shipped, and an invoice (#44) was issued on August 8, 2007. The terms of payment of the invoice were net ten days. Defendant has failed to pay this amount.

7. On or about June 27, 2007, Defendant placed an order with Plaintiff for 97.760 metric tons of Sanchez cocoa beans, at \$2,275.00 per metric ton, for a total of \$222,404.00. Goods conforming in all respects to the order were duly shipped, and an invoice (#68) was issued on January 14, 2008. The terms of payment of the invoice were net ten days. Defendant has failed to pay this amount.

8. On or about October 31, 2007, Defendant placed an order with Plaintiff for 79.920 metric tons of Haitian cocoa beans, at \$2,160.00 per metric ton, for a total of

\$166,583.52. Goods conforming in all respects to the order were duly shipped, and an invoice (#121) was issued on November 6, 2007. The terms of payment of the invoice were net ten days. Defendant has failed to pay this amount.

9. The total amount in which Defendant remains indebted to Plaintiff is the sum of the three invoices referenced above, or \$444,902.94.

10. Repeated written and oral demands for payment of the aforementioned debt have been ignored or rebuffed by Defendant.

COUNT ONE: BREACH OF CONTRACT

11. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

12. According to the terms of the contract between Plaintiff and Defendant, by which Plaintiff performed by delivering fully merchantable cocoa beans to Defendant as recited above, Defendant was obligated to pay the invoice amount for each shipment. In the specific instances noted herein, Defendant failed to pay those amounts.

13. The failure or refusal of Defendant to pay for the shipments of cocoa beans delivered to it by Plaintiff constitutes a breach of the contract between the parties, causing Plaintiff injury in the amount of \$444,902.94.

COUNT TWO: GOODS HAD AND RECEIVED

14. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

15. As from the date of receipt of each of the shipments of cocoa beans noted above, Defendant has had possession and use of the fully merchantable cocoa beans sold to it by Plaintiff, and has been able to profit thereby, although it has failed to pay for those goods.

16. The failure or refusal of Defendant to pay for the shipments of cocoa beans delivered to it by Plaintiff, although it has received them and has taken possession of them, has caused Plaintiff injury in the amount of \$444,902.94.

COUNT THREE: OPEN ACCOUNT

17. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

18. Plaintiff sold goods, including cocoa beans, to Defendant on an open account basis.

19. The unliquidated balance of the account between Plaintiff and Defendant is currently \$444,902.94, representing the three unpaid invoices detailed above.

COUNT FOUR: ACCOUNT STATED

20. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

21. Plaintiff sent invoices to Defendant in the amount of 444,902.94.

22. Defendant never objected to the amount of the invoices and never paid the invoices.

23. Defendant has harmed Plaintiff in the amount of \$44,902.94.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mars Snackfood US, LLC, prays for relief against Defendant as follows:

- a) ASSUME jurisdiction over this Action;
- b) AWARD damages to Plaintiff and against Defendant in the amount of \$444,902.94, plus pre-judgment and post-judgment interest as allowed by law; and

c) GRANT to Plaintiff such additional relief as to the Court shall appear just and equitable.

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